IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 365 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JAGATKUMAR S PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioners

MR BD DESAI APP for Respondent No.1

MR SR SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. This application arises from the complaint filed by the

opponent No.2 herein. The main allegation of fact is that a document of dissolution of partnership was made and the signature of the complainant was put upon the said deed by someone else whereby a forged document was created and a xerox copy thereof was produced in a civil suit. The allegations are made mainly against the accused No.1 and the other accused are joined as co-accused for their alleged complicity in the alleged offences. Initially, on the basis of the complaint dated 2.8.1989, an order to investigate the matter appears to have been made and, after the investigation, cognizance was taken and process was ordered to be issued against the accused on 19.4.1990. The accused appears to have made an application for discharge on 3.3.1992 and the same was heard and rejected on 13.11.1992. Out of the original accused persons, the accused Nos.3 and 4 have filed the present application challenging the order of the learned Chief Judicial Magistrate, Mehsana taking cognizance of the offences as also the order dated 13.11.1992 below the application mentioned above by which order is made to frame charges against the accused.

2. It is stated at the Bar that the main accused person to whom the knowledge and intention of committing the acts alleged as offences are attributed has expired in the year 1992 or earlier. It is also stated that by now the complainant has also passed away and the civil disputes regarding the partnership among the parties have been amicably settled since long.

3. It is submitted by learned counsel Mr. Shah for the petitioners that neither the complaint nor the statements taken during the investigation reveal or substantiate the plea that the signature alleged to have been forged on the document was placed by any of the accused. It is further submitted that except the bare denial of the complainant as to the genuineness of the signature purported to be his signature, there is nothing on record to suggest, even after the investigation, that there is a document on which signature is forged or that the accused are in any way connected with creation of such document or in possession or use of the forged document. In fact, the original document was not produced at all and the allegations were based only on the production of a photocopy of such document. Even after the investigation, it is not revealed that any of the accused had knowledge or had reason to believe that the signature purporting to be that of the complainant was not genuine. The verification of the original document and the original signature as also its comparison with the genuine signature and any examination

by an expert were conspicuously missing in the investigation. Thus, it is submitted that there was no additional material brought before the Court even after the investigation and the learned Chief Judicial Magistrate, without any reference to any further material, took cognizance of the offences and ordered framing of the charge. Relying upon the judgment of the Hon'ble Supreme Court in MOHAMMAD ATULLAH v. RAM SARAN MAHTO (AIR 1981 SC 1155), it was submitted that when the learned Chief Judicial Magistrate took cognizance of the case and ordered issue of process, there was no additional material connecting the accused with the offences alleged to have been committed.

4. In the facts and circumstances stated earlier, the learned counsel appearing for the complainant as also the learned Additional Public Prosecutor have not seriously controverted the submissions made on behalf of the petitioners. It clearly appears from the record that the allegations against the accused are based on mere presumptions and inferences drawn by the complainant and, even during the investigation, the original offending document has not seen the light of the day. It is also seen that sufficient material has not come on record to connect the accused with the alleged offences. In this view of the matter, the order to frame charges against the accused

not justified. Therefore, the order of the learned Chief Judicial Magistrate dated 19.4.1990 taking cognizance of the case and issuing the process to the accused is quashed as also the order dated 13.11.1992 ordering to frame charge is also quashed and set aside. The learned Chief Judicial Magistrate, Mehsana may now deal with the complaint in accordance with law. The petition is, therefore, allowed and the Rule is made absolute.

(KMG Thilake)
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